158-440

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 265.

THE NEW YORK, LAKE ERIE AND WESTERN COAL AND RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED AUGUST 13, 1891.

(14,801.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 15, 1894.

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1 In the Supreme Court of Pennsylvania, October Term, 1891.

NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY
vs.
COMMONWEALTH OF PENNSYLVANIA. } No. —.

Surwrit of error by the New York, Lake Erie & Western Coal & Railroad Company.

Assignment of Errors.

I. The learned court erred in not sustaining the company's second exception to the decision of the court of common pleas of Dauphin county, viz:

"The learned court erred in its second conclusion of law, as follows: 'That the taxation of such receipts does not offend against art. IX, section 1, of the constitution of Pennsylvania or against the commercial clause of the Federal Constitution.'"

II. The learned court erred in not sustaining the company's fourth exception to the decision of the court of common pleas of Dauphin county, viz:

"The learned court erred in not finding as a conclusion of law that the attempted taxation is in violation of that clause of section 8 of article I of the Constitution of the United States which confers upon Congress the power to 'regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

III. The learned court erred in affirming the judgment of the court of common pleas of Dauphin county in favor of the Commonwealth of Pennsylvania and against the New York, Lake Erie & Western Coal & Railroad Company.

2 IV. The learned court erred in not reversing the judgment of the court of common pleas of Dauphin county.

To the honorable the judges of the Supreme Court of the United States of America:

Your petitioner prays for a reversal of the judgment entered against it in the supreme court of Pennsylvania for the reasons assigned above.

THE NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY,
By its attorney, M. E. OLMSTED.

3 [Endorsed:] In U. S. Supreme Court. New York, Lake Erie & Western Coal & Railroad Company (plaintiff in error) *vs.* Commonwealth of Pennsylvania. Assignment of errors. M. E. Olmsted.

4 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The New York, Lake Erie & Western Coal and Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or
5 of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 22nd day of July, in the year of our Lord one thousand eight hundred and ninety-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

[Endorsed:] Filed in supreme court, middle district, Aug. 6, 1891.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of State of Pennsylvania, wherein The New York, Lake Erie & Western Coal and Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of July, in the year of our Lord one thousand eight hundred and ninety-one.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

7 [Endorsed:] New York, Lake Erie and Western Coal & Railroad Co. (plaintiff in error) *vs.* Commonwealth of Pennsylvania. Citation. Filed in supreme court, middle district, Aug. 6, 1891.

On this fifth day of August, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared A. C. Stamm before me, the subscriber, prothonotary of the supreme court of Pennsylvania, for the middle district thereof, and makes oath that he delivered a true copy of the within citation to James L. Stranahan, deputy attorney general of the Commonwealth of Pennsylvania. August 5, 1891.

A. C. STAMM.

Sworn to and subscribed before me the day and year aforesaid.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

8 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States, hereunto annexed, as follows, to wit:

Copy of Appearance Docket Entry.

Among the records and proceedings enrolled in the court of common pleas in and for the county of Dauphin, in the Commonwealth of Pennsylvania, to No. 142, Jan. term, 1890, is contained the following:

In Common Pleas of Dauphin County, Jan. Term, 1890.

COMMONWEALTH OF PENNSYLVANIA
vs.
NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY. } No. 142.

Kirkpatrick; Olmsted.

Docket Entries.

Appeal from the settlement of the auditor general and State treasurer.

Oct. 14, 1889.—Appeal and specifications of objection filed.
Feb'y 7, 1890.—Bond filed.
Feb'y 7, 1890.—*Narr.* and copy of account filed.
March 31, 1890.—Stipulation to try without jury filed.
April 29, 1890.—Stenographer's notes filed, and agreement as to facts.
April 29, 1890.—Opinion and finding of the court filed, deciding that there is due the Commonwealth by the defendant the sum of two hundred nineteen and $\frac{95}{100}$ dollars ($219.95) and costs.
May 27, 1890.—Defendant's exceptions filed.
Same day.—Exceptions overruled and judgment entered in accordance with opinion filed.
June 11, 1890.—Certiorari surappeal No. 8, May T., 1891, from supreme court received and filed.

Judgment of the Court.

This case having been tried without a jury, under the act of April 22, 1874, the court directed judgment to be entered as follows:

Tax, $\frac{8}{10}$ of one per centum upon $24,900	$199 20
Interest at 12 per cent. from Nov. 16, 1889, to April 29, 1890	10 74
Attorney general's commission	9 96
Total	$219 95

9 *Report.*

To the auditor general of Pennsylvania:

In accordance with the requirements of the seventh section of an act entitled "An act to provide revenue by taxation," approved June 7, 1879, as treasurer of the New York, Lake Erie and Western Coal and Railroad Company, I make the following report of the gross receipts of said company for the six months ended June 30, 1889.

(Signed) EDWARD WHITE, *Treasurer.*

Office of the treasurer New York, Lake Erie and Western Railroad Company.

21 CORTLANDT ST., NEW YORK, *August* —, 1889.

Gross receipts derived from all sources		$231,540 85
Gross receipts from traffic or business done wholly within the State		40,678 14

That is to say:

From tolls and transportation (not including U. S. mails)	$15,677 57
From transportation of U. S. mails	
From telegraph business	
From telephone business	
From express business (Wells, Fargo & Co.)	100 57
From transportation of coal mined, purchased, or sold	
From all other sources (see marginal note)	24,900 00
Total receipts within the State	$40,678 14

Marginal Note.

This item, $24,900.00, was received from the Buffalo, Rochester and Pittsburg Railway Co., as rental for the use of the track of the New York, Lake Erie and Western Coal and Railroad —.

STATE OF NEW YORK, }
City and County of New York, } ss:

On this 20th day of August, A. D. 1889, personally appeared before me, a notary public in and for the county and State aforesaid, Edward White, treasurer of the New York, Lake Erie and Western Coal and R. R. Co., who, being duly sworn according to law, did depose and say that the foregoing report is true and correct, and that the company has accounted for and returns herewith gross receipts for transportation of coal mined, purchased, or sold, at the same rates as are charged for the transportation of similar freight for other companies or individuals.

(Signed) EDWARD WHITE, *Treasurer.*

Sworn and subscribed before me, the day and year aforesaid.

[SEAL.] (Signed) CHARLES STEELE,
Notary Public (95), *New York County.*

Account.

New York, Lake Erie and Western Coal and Railroad Co. in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts per act of June 7, 1879, for six months ending June 30, 1889, as per report herewith filed:

Gross receipts	$40,678 14	
Tax at rate of eight-tenths of one per cent		$325 43
Due Commonwealth		$325 43

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *September* 12, 1889.

Settled and entered.
(Signed) JOHN A. GLENN,
For THOMAS McCAMANT,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, *September* 17, 1889.

Approved.
(Signed) WM. LIVSEY,
For WM. B. HART,
State Treasurer.

11 AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *September* 18, 1889.

I hereby certify, that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office, the day and year aforesaid.

(Signed) JOHN A. GLENN,
[SEAL.] For THOMAS McCAMANT,
Auditor General.

Appeal.

In the matter of the account for tax on gross receipts for the six months ending June 30, 1889, amounting to $325.43, settled against the New York, Lake Erie and Western Coal and Railroad Company by the auditor general of Pennsylvania September 12, 1889, and approved by the State treasurer September 17, 1889, a copy of which account is hereunto attached.

The said New York, Lake Erie and Western Coal and Railroad Company having paid or proposing to pay into the State treasury the sum of $126.23, being the full tax at eight mills upon the company's receipts from tolls and transportation and from express business wholly within the State, hereby appeals from said settlement of account to the court of common pleas of Dauphin county, and

files the following specifications of objections thereto, agreeably to the provisions of the act of assembly in such case made and provided.

1. The account hereby appealed from includes tax to the amount of $199.20 upon $24,900, receipts derived from the Buffalo, Rochester and Pittsburg Railway Company, as rental for the use of the tracks of The New York, Lake Erie and Western Coal and Railroad Company, appellant. Said tax is improperly and illegally charged, because the seventh section of the act of June 7, 1879, under which said tax is claimed, imposes a tax only upon receipts "for tolls and transportation, telegraph business, or express business."

12 2. The Buffalo, Rochester and Pittsburg Railway Company has paid, or is liable to pay, a tax upon that portion of its receipts derived from transportation within the State of Pennsylvania over the tracks of the corporation appellant, and if the seventh section of the act of June 7, 1879, or any other act of assembly, can be construed to impose upon the corporation appellant an additional tax in respect of receipts derived as rental from the Buffalo, Rochester and Pittsburg Railroad Company, then said act is unconstitutional and void, because in conflict with section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the *the* territorial limits of the authority levying the tax."

3. The taxation of the receipts of the corporation appellant derived as rental from the Buffalo, Rochester and Pittsburg Railway Company would result in double taxation, which is not warranted by the act of June 7, 1879, or any other act of assembly, and which is never to be presumed in the absence of express authority of law.

4. The business conducted by the Buffalo, Rochester and Pittsburg Railway Company, over the tracks of The New York, Lake Erie and Western Coal and Railroad Company, appellant, and for which $24.900 was paid by the said Buffalo, Rochester and Pittsburg Railway Company, consisted exclusively of the transportation of freight and passengers from points in other States to points in Pennsylvania, or from points in Pennsylvania to points in other States, or from points in other States to points in other States, passing through Pennsylvania. The taxation of the receipts of the corporation appellant derived from the rental of its tracks to the Buffalo, Rochester and Pittsburg Railway Company, for conducting such interstate business, would be an interference with interstate commerce, and as such, would be in conflict with that clause of section 8 of article I of the Constitution of the United States, which provides that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes." The act of June 7, 1879, or any other act of assembly, if it shall be found to warrant the imposition of such tax, is, therefore, unconstitutional and void.

13 5. The New York, Lake Erie and Western Coal and Railroad Company having paid or proposing to pay into the State treasury the sum of $126.23, being the full tax at eight mills

upon the company's receipts from tolls and transportation, and from express business, wholly within the State of Pennsylvania, it is not indebted to the Commonwealth in any further sum, and the balance claimed in the settlement hereby appealed from is erroneously and illegally charged.

Harrisburg, Pa., October 8, 1889.

NEW YORK, LAKE ERIE AND WESTERN COAL AND RAILROAD COMPANY,

(Signed) By its attorney, M. E. OLMSTED.

Endorsed: No. 142, January term, 1890. Commonwealth of Pennsylvania *vs.* New York, Lake Erie and Western Coal and Railroad Co. Appeal from the settlement of an account by the auditor general and State treasurer. Filed in the auditor general's office the 9th day of Oct., 1889. (Signed) Jno. A. Glenn for Thomas McCamant, auditor general. Filed in the prothonotary's office the 14th day of October, 1889. —— ——, prothonotary. M. E. Olmsted, attorney for defendant.

14 *Bond on Appeal.*

Know all men by these presents that we, the New York, Lake Erie & Western Coal and Railroad Company and American Surety Company of New York, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of three hundred and ninety-eight and $\frac{40}{100}$ dollars ($398.40), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and the corporate seal of said company and dated the 5th day of February, A. D. 1890.

Whereas the above-bounden New York, Lake Erie & Western Coal & Railroad Company has entered in the office of the auditor general of Pennsylvania an appeal to the court of common pleas of Dauphin county from the settlement of an account for tax on gross receipts amounting to three hundred and twenty-five $\frac{43}{100}$ dollars ($325.43), made by the auditor general on the 12 day of Sept. and approved by the State treasurer on the 17 day of September, 1889, upon which $126.23 has been paid into the State treasury:

Now, the condition of this obligation is such that if the said New York, Lake Erie & Western Coal & R. R. Company shall prosecute its said appeal with effect and pay all costs or charges which the court or arbitrators having jurisdiction to hear and determine said appeal shall award, and also pay any sum of money which shall appear by the judgment of the court or award of arbitrators to be due upon said account to the Commonwealth of Pennsylvania, then

this obligation to be void and of none effect, or otherwise to be and remain in full force and virtue.

NEW YORK, LAKE ERIE & WESTERN
COAL & RAILROAD COMPANY,
By S. M. FELTON, JR., *Vice-president.*

Attest:

[Seal of New York, Lake E. & Western Coal & R. R. Co.]

A. R. MACDONOUGH, *Secretary.*

AMERICAN SURETY CO. OF NEW YORK,
By DAVID B. SICKELS, 2 *Vice-president.* [SEAL.]
WYLLUS BENEDICT,
Assistant Secretary. [SEAL.]

[Seal of American Surety Co.]

Signed, sealed, and delivered in presence of—
H. G. HINTON.

The security of the above bond is approved.

(Must be signed by a judge of some court in county where sureties reside.)

SIMON M. EHRLIE,
Justice of City Court of New York.

Feb. 6, 1890.—The security of the within bond approved by the court.

J. W. SIMONTON, *P. J.*

15 *Narr.*

In Dauphin Common Pleas.

No. 142, Jan. Term, 1890.

DAUPHIN COUNTY, *ss:*

The Commonwealth of Pennsylvania, by her attorney general, complains of the New York, Lake Erie and Western Coal and Railroad Company of a plea that they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her, for that whereas the said defendants, on the 17th day of September, A. D. 1889, at the county of Dauphin aforesaid, were indebted to the said plaintiff in the sum of three hundred and twenty-five $\frac{43}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled and signed by the auditor general and State treasurer of this Commonwealth and duly entered in the books of their respective offices, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and owing the said plaintiff from the said defendants, with interest thereon, at the rate of twelve per centum per annum, from and after the expiration of sixty days from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general and State treasurer of this

Commonwealth, for tax on gross receipts, per act of June 7th, 1889, for six months ending June 30th, 1889, a copy of which said account was thereafter sent by the said auditor general, under his hand and seal of office, to the said defendants, and which yet remains in full force against the said defendants and — appealed from; whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth, parcel of the said sum above demanded, with interest and other legal charges, and, being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the said last-mentioned sum of money.

And whereas, also, the said defendants, on the day and year in the first count first mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned, for money then and there had and received by the said defendants to and for the use
15½ of the said plaintiff, and also a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor general and State treasurer of this Commonwealth against the said defendants, on the day and year in the first count mentioned, for tax on gross receipts;

And whereas afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money respectively to the said plaintiff on request: Yet the said defendants have disregarded their said promises and, although often requested so to do, have not as yet paid any of the said several sums of money or any part thereof, to the damage of the said plaintiff of one hundred thousand dollars; and therefore she brings suit, &c.

JOHN F. SANDERSON,
Deputy Attorney General.

16 *Account.*

New York, Lake Erie and Western Coal and Railroad Co. in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts per act of June 7th, 1879, for six months ending June 30th, 1889, as per report herewith filed:

Gross receipts	$40,678 14	
Tax at rate of eight-tenths of one per cent		$325 43
Due Commonwealth		$325 43

Interest at 12 per centum from 60 days after date of settlement; remit to State treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, PA., *Sept.* 12, 1889.

Settled and entered.

JOHN A. GLENN,
For THOMAS McCAMANT,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, PA., *Sept.* 17, 1889.

Approved.

WM. LIVISEY,
For WM. B. HART,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Oct.* 10, 1889.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and the seal of office the day and year aforesaid.

JOHN A. GLENN,
For THOMAS McCAMANT,
Auditor General.

[Seal of the Auditor General.]

17 *Stipulation to Try Without Jury.*

In the Court of Common Pleas of Dauphin County, January Term, 1890.

COMMONWEALTH OF PENNSYLVANIA
vs.
NEW YORK, LAKE ERIE AND WESTERN COAL AND R. R. CO. } No. 142.

It is hereby agreed that a trial by jury be dispensed with in the above-stated case, and that the same be submitted to the decision of the court to be heard and determined under the provisions of an act entitled "An act to provide for the submission of civil cases to the decision of the court, and to dispense with trial by jury," approved the 22d day of April, 1874, subject, however, to a writ of error as in other cases, at the option of either party.

March 31, 1890.

(Signed) JOHN F. SANDERSON,
Deputy Attorney General.

(Signed) M. E. OLMSTED,
Attorney for Defendant.

Endorsed: No. 142, Jan. term, 1890. Commonwealth *vs.* New York, Lake Erie and Western Coal and R. R. Co. Stipulation to try without jury. Filed March 31, 1890.

18 ("EXHIBIT A.")

Agreement as to Facts.

In the Court of Common Pleas of Dauphin County, January Term, 1890.

COMMONWEALTH OF PENNSYLVANIA
vs.
NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY. } No. 142.

And now, to wit, March 31, 1890, it is agreed as follows:

That the defendant is a corporation of the State of Pennsylvania, owning a railroad from Alton to Johnsonburg, in said State.

That the Buffalo, Rochester & Pittsburgh Railway Company (formerly Rochester & Pittsburgh Railroad Company) uses the portion of the said railroad between Crawford Junction and Johnsonburg, in pursuance of, and in accordance with, the terms of a contract dated October, A. D. 1882, made part hereof, hereunto attached, and marked Exhibit B.

That the item of $24,900 of receipts mentioned in the return of gross receipts for the six months ending June 30, 1889, reported by defendant's treasurer to the auditor general of Pennsylvania as "received from the Buffalo, Rochester & Pittsburgh Railway Company as rental for the use of the tracks of the N. Y., L. E. & W. Coal & Railroad Company," was one semi-annual payment received by defendant under clause 1, on page 2, of said contract, marked Exhibit A.

That the Buffalo, Rochester & Pittsburgh Railway Company has paid into the State treasury of Pennsylvania the tax imposed by the seventh section of the act of June 7th, 1879, upon its gross receipts for the six months ending June 30, 1889, derived from the transportation of freight and passengers over the tracks of defendant, in pursuance of the said contracts, so far as the said receipts were derived from the transportation of freight and passengers between points both of which are in the State of Pennsylvania. But nine-tenths of the said receipts were derived from the transportation of freight and passengers by continuous transportation upon a single way bill or ticket from points in Pennsylvania to points in other States, or from points in other States to points in Pennsylvania.

That defendant, on the tenth of February, 1890, paid into the State treasury of Pennsylvania the sum of $126.23 on account of tax on gross receipts for the six months ending June 30, 1889.

(Signed) JOHN F. SANDERSON,
Dep. Attorney General.

(Signed) M. E. OLMSTED,
Attorney for Defendant.

EXHIBIT A.

This contract, made this twentieth day of October, A. D. 1882, between the New York, Lake Erie and Western Coal and Railroad Company, party of the first part, and the Rochester and Pittsburgh Railroad Company, party of the second part, witnesseth:

Whereas, the party of the first part is engaged in the construction of a railroad from Alton to Johnsonburg, in the State of Pennsylvania, and the party of the second part is engaged in the
19 construction of a railroad from Rochester, in the State of New York, to Punxsutawney, in the State of Pennsylvania, and desires to use that portion of the railroad of the party of the first part, when completed, between Crawford Junction and Johnsonburg aforesaid, as a part of its line of railroad aforesaid, in the manner hereinafter provided.

Now, in consideration of the premises, the party of the first part hereby gives and grants unto the party of the second part the right of trackage over that portion of its said railroad between Crawford Junction and Johnsonburg aforesaid, for the transportation of coal, freights, passengers, express, and mails, at its own expense, together with the privilege of using the sidings, switches, water, water stations, turnouts, turn-tables, and depots of the party of the first part upon its railroad between said Crawford Junction and Johnsonburg aforesaid, to such extent as shall be reasonably required for the business of the party of the second part thereon under this contract.

Subject, however, to all such reasonable rules and regulations as the party of the first part may from time to time prescribe with reference thereto.

In consideration thereof, the party of the second part hereby agrees to pay the party of the first part in compensation for the rights and privileges granted as aforesaid, as follows:

1. The sum of forty-nine thousand eight hundred dollars per annum, payable semi-annually.

2. An amount per annum equal to six per centum upon one-half of the cost of all additions and betterments made to and upon the portion of said railroad aforesaid, (including therein all additional sloping of the banks of cuts,) during the continuance of this contract, the same to be ascertained and paid semi-annually.

3. A portion of the annual cost of the maintenance of the portion of said railroad aforesaid, of the care and management thereof, and of all taxes and insurances paid thereon, to be ascertained upon the basis of the comparative wheelage over the same by the parties hereto; such proportion to be ascertained and paid monthly.

All expenses of renewing and reconstructing the bridges, station-houses, superstructure and other portions of said railroad,
20 when destroyed or injured by fire or otherwise, shall be deemed and treated as part of the cost of maintenance hereunder, except only in the case of the Kinzua viaduct, so called, upon which ordinary repairs shall be considered as maintenance under this contract.

Accurate accounts shall be kept by the party of the first part of the trackage of both parties over the said road, as well as of all expenditures by the party of the first part in the maintenance, care and management of the railroad; to which accounts the party of the second part shall have access at all reasonable times for the purpose of verification, and payments of the amounts found to be due from the party of the second part to the party of the first part shall be made accordingly.

It is agreed that the following general rules and regulations shall govern the party of the second part in the enjoyment of the privileges hereunder:

First. Trains of the party of the second part shall have equal rights and privileges, and shall be subject to like conditions and restrictions, as trains of the same class of the party of the first part.

Second. The party of the second part shall be responsible while upon the railroad of the party of the first part for all loss and damage, the result of the acts or omissions of its officers, agents, or employees, except where such loss or damage is the result of the negligence of the party of the first part or of its officers, agents, or employees.

Third. The party of the second part shall do no business between stations upon the railroad of the party of the first part or between stations upon said railroad and stations upon the railroad of the Buffalo, Bradford and Pittsburg Railroad Company, south of a point 2,500 feet northerly of Howard's crossing.

This contract shall become operative on the first day of January, 1883, or as soon thereafter as the railroad of the first party shall be completed for use hereunder. Should said railroad be completed before January 1, 1883, the party of the second part, at its option, may enter upon the said railroad upon such completion; and this contract shall thereupon begin to run and become operative.

21 This contract shall continue for a period of five years from the time it becomes operative as aforesaid, and until the expiration of one year's written notice thereafter given by either party of its desire to terminate the same.

In consideration of the grants and privileges herein given, the party of the second part agrees that during the said period of five years, and until notice of termination shall have been given as aforesaid, it will not construct or be interested, directly or indirectly, in the construction or operation of any railroad parallel to, or in competition with, the railroad of the party of the first part.

It is expressly agreed that in the event the party of the second part shall fail to comply with or perform any of the covenants and agreements on its part hereinbefore expressed to be kept and performed, that then and in such case the party of the first part may terminate this contract upon sixty days' written notice.

All questions of difference or dispute between the parties hereto, arising under this contract, shall be submitted to three arbitrators, two of whom shall be chosen by the parties hereto respectively, and the third by the two so chosen, and the decision of said arbitrators.

or a majority of them upon the question so submitted shall be binding upon the parties.

Witness the corporate seal of the parties hereto set and duly attested the day and year first above written.

THE ROCHESTER AND PITTSBURGH RAILROAD COMPANY,

[SEAL.] By WALSTON H. BROWN, *President.*

Attest: THOS. F. WENTWORTH, *Secretary.*

THE NEW YORK, LAKE ERIE AND WESTERN COAL AND RAILROAD CO.,

[SEAL.] By THOMAS L. KANE, *President.*

Attest: A. R. MACDONOUGH, *Secretary.*

22 EXHIBIT B.

This additional and supplemental contract and agreement, made and executed in duplicate, this sixth day of December, in the year eighteen hundred and eighty-eight, between the New York, Lake Erie and Western Coal and Railroad Company, party of the first part, and the Buffalo, Rochester and Pittsburgh Railway Company, party of the second part;

Whereas, on the 20th day of October, A. D. 1882, a certain contract in writing was entered into and executed by and between the party of the first part hereto and a corporation then existing under the name and style of the Rochester and Pittsburgh Railroad Company;

And whereas, the party of the second part hereto has succeeded to all the right, title, and interest in and to the property and franchises which were possessed by the said Rochester and Pittsburgh Railroad Company;

And whereas, it is desired by the parties to this supplementary agreement, that the said contract of the 20th of October, A. D. 1882, and all the terms and provisions thereof, shall remain in full force and effect except in so far as the same are modified or altered by this supplementary agreement;

Now, this agreement witnesseth:

That for and in consideration of the mutual advantages to be derived from the performance of the conditions, agreements, and covenants hereinafter specified by the said two parties hereto to be respectively done and performed; it is hereby covenated and agreed by and between the parties hereto, that the said Buffalo, Rochester and Pittsburgh Railway Company will monthly advance, on presentation of proper vouchers, all money required to build the necessary length of side tracks, double track, and other improvements, so as to enable the road to be operated to the best advantage between Crawford Junction and Johnsonburg; it being understood and agreed by the parties hereto that the two companies will agree as to

the work and to the amount of expenditure which shall be necessary to effect this object, and that the money shall be expended under the direction and control of the New York, Lake Erie and Western Railroad Company.

23 And it is further understood and agreed by and between the said parties, that one-half the cost of the above-mentioned improvement, which must be completed on or before January 1, 1890, is to be deducted on account of the rental to be paid by the said Buffalo, Rochester and Pittsburgh Railway Company to the said New York, Lake Erie and Western Coal and Railroad Company, in the year eighteen hundred and ninety; but that the moneys to be advanced by the Buffalo, Rochester and Pittsburgh Railway Company in carrying out the foregoing provisions of this contract shall not bear interest.

It is hereby further mutually understood and agreed by and between the parties hereto, that the written notice of one year provided in the original agreement, is hereby altered so as to require two (2) years' written notice to be given by either of the parties to this agreement in order to terminate the same; but nothing herein contained shall be construed so as to deprive the party of the first part of its right to terminate the said contract upon sixty days' notice, as is also provided in said original agreement.

Witness the corporate seals of the parties hereto, duly set and attested, the day and year first above written.

THE NEW YORK, LAKE ERIE AND WESTERN COAL AND RAILROAD COMPANY,

[SEAL.] By J. K. P. HALL, *President.*

Attest: A. R. MACDONOUGH, *Secretary.*

THE BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY COMPANY,

[SEAL.] By ADRIAN ISELIN, JR., *P't.*

Attest: GORDON MACDONALD, *Secretary.*

Signed and sealed in the presence of—

——— ———.

Endorsed: 142. January term, 1890. Commonwealth of Pennsylvania *vs.* New York, Lake Erie and Western Coal and Railroad Company. Agreement as to facts. Filed April 29, 1890. Exhibit "A." (Signed) Edgar L. King.

24 *State Treasurer's Receipt.*

EXECUTIVE DEPARTMENT,
TREASURY OF PENNSYLVANIA,
HARRISBURG, *Feb'y* 10, 1890.

Received from New York, Lake Erie and Western Coal and Railroad Company one hundred and twenty-six dollars and twenty-

three cents on account, to wit: tax on gross receipts for the six months ending June 30, 1889, $126.23.

(Signed) JOHN E. STOTT,
For W. LIVSEY,
State Treasurer.

Registered and countersigned.

(Signed) JAMES H. McALLISTER,
For THOMAS McCAMANT,
Auditor General.

Stenographer's Notes.

Dauphin County Court of Common Pleas, January Term, 1890.

COMMONWEALTH
vs.
NEW YORK, LAKE ERIE AND WESTERN COAL AND RAILROAD COMPANY. } No. 142. Gross Receipts.

Tried before Hon. J. B. McPherson, additional law judge, at Harrisburg, Pa., Monday, March 31, 1890.

Appearances: Plaintiff, Hon. W. S. Kirkpatrick, attorney general; Hon. Jno. F. Sanderson, deputy attorney general. Defendant, M. E. Olmsted, Esq.

Recorded and transcribed in compliance with the provisions of the act of assembly of May 24, 1887.

(Signed) EDGAR L. KING,
Official Stenographer.

Stipulation for trial without a jury filed.

JOHN A. GLENN, called by plaintiff, sworn.

Examined by Mr. SANDERSON:

Q. Please produce the settlement in this case?

25 A. A settlement was made for tax on gross receipts for the six months ending June 30, 1889, amounting to $325.43. This settlement was based upon a report filed by the company covering this period. I produce the original report and settlement.

By Mr. OLMSTED:

Q. You have the report in your hand?

A. I have.

Q. There is a marginal note of the fact that $24,900 of the receipts returned was received from the Buffalo, Rochester and Pittsburgh Railroad Company as rental for the use of the tracks of the New York, Lake Erie and Western Coal and Railroad Company?

A. Yes, sir; there is such a note upon the margin.

Q. State whether or not that item is included in the gross sum of receipts upon which tax is charged in that account.

A. It is included.

Mr. SANDERSON: We offer in evidence the report and settlement.

Mr. OLMSTED: Defendant offers in evidence the agreement dated March 31, 1890, signed by counsel for plaintiff and defendant. (Marked "Exhibit A.")

Endorsed: 142. January T., 1890. Commonwealth *vs.* N. Y., L. E. and Western Coal and Railroad Co. Stenographer's notes of testimony. Filed April 29, 1890.

26 *Opinion of the Court of Common Pleas.*

Dauphin C. P., Jan. T., 1890.

COMMONWEALTH *vs.* NEW YORK, LAKE ERIE AND WERTERN COAL AND R. R. Co.	No. 142. Appeal from Accounting Officers.

By the COURT:

This case was tried without a jury, under the act of 1874. We find the facts to be as follows:

1. The defendant is a Pennsylvania corporation. It owns and operates a railroad lying wholly within this State, extending from Alton to Johnsonburg and is engaged in the business of transporting freight and passengers.

2. The Buffalo, Rochester & Pittsburgh Railway Company, (formerly the Rochester & Pittsburgh Railroad Company,) makes use of a portion of defendant's railroad in the manner, for the purposes, and upon the terms specified in two agreements, made Oct. 20, 1882, and Dec. 6, 1888. These agreements are made part of this finding.

3. The Buffalo, Rochester & Pittsburgh Railway Company has paid to the State the tax upon its gross receipts, under sec. 7 of the act of 1879, for the six months ending June 30, 1889, so far as said receipts were derived from transportation between points both of which are in the State of Pennsylvania. Nine-tenths of its gross receipts were derived from the transportation of freight and passengers by continuous carriage upon a single way bill or ticket from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania.

27 4. During the said six months the defendant received from the Buffalo, Rochester & Pittsburgh Railway Company the sum of $24,900, being one semi-annual payment under clause 1 on page 2 of the agreement of Oct. 20, 1882.

5. This settlement taxes the gross receipts of the defendant for the six months ending June 30, 1889, under sec. 7 of the act of 1879, and includes therein the said sum of $24,900.

6. On Feb. 10, 1890, the defendant paid to the State the whole amount demanded, except the tax upon said sum of $24,900.

Conclusions of Law.

The questions raised by this appeal are identical with those discussed in Com. *v.* N. Y., Lk. Erie & West. R. R. Co., No. 141, Jan. T., 1890, Dauphin C. P., except that of apportionment; and we refer to the opinion there filed for the reasons which support the following conclusions:

1. That the rental paid to the defendant by the Buffalo, Rochester & Pittsburgh Railway Company is "receipts for tolls" within the meaning of sec. 7 of the revenue act of 1870 (P. L., 112).

2. That the taxation of such receipts does not offend against art. IX, sect. 1, of the constitution of Pennsylvania, or against the commerce clause of the Federal Constitution.

3. That such taxation is not, in the case before us, double taxation.

The Commonwealth is entitled to recover as follows:

Tax eight-tenth- of 1 per cent. upon $24,900	$199 20
Int. at 12 per cent. from Nov. 16, 1889, to Apr. 29, 1890...	10 79
Att'y general's commission	9 96
Total	$219 95

for which amount we direct judgment to be entered, if exceptions are not filed according to law.

(Signed) JOHN B. McPHERSON, *A. L. J.*

28 *Defendant's Exceptions.*

In the Court of Common Pleas of Dauphin County, January Term, 1890.

COMMONWEALTH OF PENNSYLVANIA *vs.* NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY. } No. 142.

This case having been tried by the court without a jury, under the act of 1874, defendant files the following exceptions to the decision of the court:

1. The learned court erred in its first conclusion of law as follows: "That the rental paid to the defendant by the Buffalo, Rochester & Pittsburg Railway Company is 'receipts for tolls' within the meaning of sec. 7 of the revenue act of 1874 (P. L. 112)."

2. The learned court erred in its second conclusion of law as follows: "That the taxation of such receipts does not offend against art. IX, section 1, of the constitution of Pennsylvania, or against the commercial clause of the Federal Constitution."

3. The learned court erred in its third conclusion of laws —: "That such taxation is not, in the case before us, double taxation."

4. The learned court erred in not finding as a conclusion of law that the attempted taxation is in violation of that clause of section 8 of article I of the Constitution of the United States which confers

upon Congress the power to "regulate commerce with foreign nations and among the several States and with the Indian tribes."

5. The learned court erred in directing judgment to be entered in favor of the Commonwealth for $219.95.

6. The learned court erred in not directing judgment to be entered in favor of the defendant.

NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY,

(Signed) By its attorney, M. E. OLMSTED.

Order of Court Overruling Exceptions.

And now, to wit, May 27, 1890, the foregoing exceptions are overruled, and judgment is directed to be entered in accordance with the opinion heretofore filed. To this ruling and judgment defendant excepts, and at its request exceptions sealed.

(Signed) JOHN B. McPHERSON, *A. L. J.* [SEAL.]

29 *Supreme Court of Pennsylvania Docket Entries.*

At a supreme court of the State of Pennsylvania sitting in and for the middle district of the said court, at the city of Harrisburg, Pennsylvania, on the 21st Monday following the first Monday of January, A. D. 1891.

Present: The Honorable Edward M. Paxson, chief justice; James P. Sterrett, Henry Green, Silas M. Clark, Henry W. Williams, James T. Mitchell, and J. Brewster McCollum, justices, and William Pearson, prothonotary, of said court.

Among the records of the said supreme court of Pennsylvania in and for the middle district, to May term, 1891, No. 8, it is contained as follows, to wit:

Docket Entries.

NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY, Defendant Below,
vs.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below.

Olmsted.

1890, June 11.—Precipe, appeal, affidavit, and recog. filed.
Eo die.—Exit writ of certiorari, r't'ble *sec. reg.*
1891, May 29.—Record returned and filed.
" June 1.—Assignments of error filed.
" June 1.—Argued.
1891, June 5.—Judgment affirmed, *per curiam.*
1891, " —Petition for allocatur from supreme court of writ of error from Supreme Court of the United States; allocatur of said writ by Hon. Joseph P. Bradley, justice of said court, and said writ of error received and filed; citation from said Hon.
30 Joseph P. Bradley and affidavit of service thereof to Jas. A. Stranahan, deputy attorney general for the Commonwealth

of Pennsylvania, and writ of error bond in the sum of five hundred ($500.00) received and filed.

Certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

31 *Precipe.*

In the Supreme Court of Pennsylvania for the Middle District.

COMMONWEALTH OF PENNSYLVANIA *vs.* NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD CO.	Certiorari to the Court of Common Pleas for the County of Dauphin, of January Term, 1890. No. 142.

Issue certiorari to the court of common pleas of the county of Dauphin to bring up record and proceedings in a certain action in said court, No. 142, January term, 1890, wherein Commonwealth of Pennsylvania was plaintiff and The N. Y., L. E. & Western Coal & R. R. Co. defendant, returnable to next term *sec. reg.*

M. E. OLMSTED,
Att'y for Def't.

To Wm. Pearson, proth'y sup. court, middle district.

32 *Precipe for Appeal.*

In the Supreme Court of Pennsylvania for the Middle District.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff, *vs.* NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD CO., Defendant.	Court of Common Pleas of Dauphin County, January Term, 1890. No. 142.

Enter appeal on behalf of defendant above named from a judgment of the court of common pleas of the county of Dauphin.

M. E. OLMSTED,
Att'y for Def't.

To Wm. Pearson, proth'y sup. c't, middle district.

Affidavit.

COUNTY OF DAUPHIN, *ss:*

M. E. Olmsted, being duly sworn, saith that the above appeal is not intended for delay.

M. E. OLMSTED.

Sworn and subscribed this 11th day of June, A. D. 1890.

WM. PEARSON,
Prothonotary,
Per JOHN HARNER,
Dep'ty Prot'y.

33 *Recognizance.*

In the Supreme Court of Pennsylvania for the Middle District.

COMMONWEALTH OF PENNSYLVANIA	Appeal of Defendant from the Judgment of the Court of Common Pleas for the County of Dauphin, of January Term, 1890. No. 142.
vs.	
NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD CO.	

We, The New York, Lake Erie & Western Coal & Railroad Company, by *its* attorney-, M. E. Olmsted and A. C. Stamm, severally acknowledge to owe the above-named plaintiff the sum of one hundred dollars upon condition that the above-named defendant do not prosecute its appeal with effect; and if the said judgment be affirmed or the appeal be discontinued or nonprossed that said defendant will pay the cost adjudged or accruing upon such judgment and all other costs that may be awarded upon such appeal, or else we will do it for said defendant.

NEW YORK, LAKE ERIE & WESTERN
COAL & R. R. CO.,
By its attorney-, M. E. OLMSTED.
A. C. STAMM.

Taken and acknowledged this 11th day of June, A. D. 1890.

WM. PEARSON,
Prothonotary,
Per JOHN HARNER,
Dep'ty Prot'y.

34 *Writ of Certiorari.*

MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

We, being willing for certain causes to be certified of the appeal of the New York, Lake Erie & Western Coal & Railroad Company from the judgment of the said court in a suit wherein The Commonwealth of Pennsylvania is plaintiff and the said appellant defendant, to No. 142, Jan. term, 1890, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court, at a supreme court to be holden at Harrisburg, in and for the middle district of said Commonwealth, on the 21 Monday foll. 1st Mon. of Jan., 1891, being the 1st Monday of the term, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon what of right and according to our laws of the said State ought.

Witness the Hon. Edward M. Paxson, doctor of laws, chief justice of our supreme court, at Harrisburg, the 11th day of June, in the

year of our Lord one thousand eight hundred and ninety, and of the Commonwealth the 114th.

WILLIAM PEARSON,
Prothonotary.

35 [Endorsed:] No. 8. May term, 1891. Supreme court, middle district. Commonwealth of Pennsylvania *v.* New York, Lake Erie & Western Coal & Railroad Co. Certiorari sur-appeal to the court of common pleas for the county of Dauphin. Returnable the 21 Mon. foll. 1 Monday of Jan., 1891. "Rule on the appellee to appear and plead on the return day of the writ." N. B. 10 days' notice to the parties or their counsel below necessary to compel an appearance.

The record and process, with all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send, as within we are commanded.

J. W. SIMONTON, *P. J.* [L. S.]

I certify that recognizance for costs in $100, with M. E. Olmsted and A. C. Stamm as bail, has been duly filed in the supreme court.

WILLIAM PEARSON,
Prothonotary.

Due service admitted.

JOHN F. SANDERSON,
Deputy Attorney General.

Filed in supreme court, middle district, May 29, 1894.

36 *Assignments of Error.*

1. The learned court erred in its first conclusion of law, as follows: "That the rental paid to the defendant by the Buffalo, Rochester & Pittsburgh Railway Company is 'receipts for tolls' within the meaning of section 7 of the revenue act of 1879, (P. L. 112.)"

2. The learned court erred in its second conclusion of law, as follows: "That the taxation of such receipts does not offend against art IX, section 1, of the constitution of Pennsylvania, or against the commerce clause of the Federal Constitution."

3. The learned court erred in its third conclusion of law, as follows: "That such taxation is not, in the case before us, double taxation."

4. The learned court erred in overruling the fourth exception filed by the defendant, which was as follows:

"The learned court erred in not finding, as a conclusion of law, that the attempted taxation is in violation of that clause of section 8 of article I of the Constitution of the United States, which confers upon Congress the power to "regulate commerce with foreign nations and among the several States, and with the Indian tribes."

5. The learned court erred in not sustaining the fifth objection specified in defendant's appeal, which was as follows:

"The New York, Lake Erie & Western Coal and Railroad Company, having paid, or proposing to pay, into the State treasury the sum of $126.23, being the full tax at eight mills upon the company's receipts from tolls and transportation, and from express business wholly within the State of Pennsylvania, it is not indebted to the Commonwealth in any further sum, and the balance claimed in the settlement hereby appealed from is erroneously and illegally charged."

6. The learned court erred in directing judgment to be entered in favor of the Commonwealth for $219.95.

7. The learned court erred in not directing judgment to be entered in favor of defendant.

37 *Opinion of Supreme Court.*

* * * * * * * *

SAME
vs.
N. Y., L. E. & W. C. & R. R. Co., Appellant. } No. 8. May Term, 1891.

Per Curiam:

These cases were argued together. The opinion of the learned judge below in No. 7, of May term, covers substantially all the questions presented, and we affirm the judgment in each case upon said opinion.

[Endorsed:] Nos. 5, 6, 7, & 8. May T., 1891. Commonwealth *vs.* R. R. Companies. Aff'd, P. C. Filed June 5th, 1891. Copy.

38 *Return to Writ of Error from Supreme Court of the United States.*

And now here, on this day, to wit, August 6th, 1891, the said The New York, Lake Erie & Western Coal and Railroad Company produces to the supreme court of Pennsylvania here the writ of the United States of America for the correcting of errors of and upon the said premises, commanding the record and proceedings aforesaid of the judgment aforesaid so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the second Monday of October next, which writ of error is hereunto annexed.

In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided a transcript of the records and proceedings of the judgment aforesaid so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

39 To the Honorable Joseph P. Bradley, justice of the Supreme Court of the United States:

The petition of the New York, Lake Erie & Western Coal & Railroad Company respectfully showeth—

That your petitioner is a corporation of the State of Pennsylvania, owning and operating a railroad within said State, connecting with the railroad of the Buffalo, Rochester & Pittsburgh Railway Company, which extends into the State of New York.

That your petitioner grants to the Buffalo, Rochester & Pittsburgh Company the right of trackage over a portion of its road for the transportion of coal, freights, merchandise, express, and mails in consideration of the payment of $49,000 per annum, payable semi-annually. Nine-tenths of the transportation under said trackage agreement was and is of freight and passengers by continuous transportation upon a single way bill or ticket from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania.

Section 7 of the Pennsylvania statute of June 7, 1879 (P. L., 112), requires that each railroad and transportation company doing business in said State "shall pay the State treasurer for the use of the Commonwealth a tax of eight-tenths of one per centum upon the gross receipts of said company for tolls and transportation, telegraph business, or express business," payable semi-annually, &c., and for the six months ending June 30, 1889, the auditor
40 general and State treasurer settled against your petitioner an account for tax on gross receipts wherein was embraced a tax of 8 mills upon $24,900, being one semi-annual payment for trackage as aforesaid.

That from said account, agreeably to the laws of Pennsylvania, your petitioner entered an appeal to the court of common pleas of Dauphin county, averring in said appeal that the transportation in respect of which said sum of $24,900 was paid was wholly interstate transportation and that the attempted taxation thereof was in violation of the commerce clause of the Federal Constitution.

That the court of common pleas of Dauphin county found as a fact that "nine-tenths of its gross receipts were derived from the transportation of freight and passengers by continuous carriage upon a single way bill or ticket from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania," but nevertheless held as a conclusion of law "that the taxation of said receipts does not offend against art. IX, section 1, of the constitution of Pennsylvania, or against the commerce clause of the Federal Constitution."

That your petitioner filed exceptions to said decision, among which were the following:

"The learned court erred in its second conclusion of law, as follows: 'That the taxation of such receipts does not offend against art. IX, section 1, of the constitution of Pennsylvania, or against the commerce clause of the Federal Constitution.'"

"The learned court erred in not finding as a conclusion of law

that the attempted taxation is in violation of that clause of section 8 of article I of the Constitution of the United States
41 which confers upon Congress the power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

That your petitioner's said exceptions were overruled and judgment entered May 27, 1890, in favor of the Commonwealth of Pennsylvania and against your petitioner for a tax of 8 mills upon said $24,900, together with interest at 12 per centum per annum and attorney general's commission, amounting in the whole to $219.95.

That your petitioner appealed from said judgment to the supreme court of Pennsylvania, to No. 8, May term, in the middle district thereof, assigning as error the overruling of the aforesaid exceptions.

That after hearing the said cause the supreme court of Pennsylvania refused to sustain the assignments of error, and an order was entered upon the fifth day of June, A. D. 1891, affirming the judgment of the court of common pleas of Dauphin county.

That the supreme court of Pennsylvania, in which the case was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of said court is final.

That the judgment of said court, as already shown, necessarily involved the decision of a Federal question, and that said decision is in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.
42 Wherefore your petitioner (herewith presenting a bond, with security, for approval) prays that a writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the citation to the defendant may accompany the same; and it will ever pray, &c.

Harrisburg, Pa., July 7, 1891.

THE NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY,
By its attorney, M. E. OLMSTED.

Presented to me & allowed July 22d, 1891.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

43 [Endorsed:] In U. S. Supreme Court. New York, Lake Erie and Western Coal & Railroad Co. (plaintiff in error) *vs.* Commonwealth of Pennsylvania. Petition for allocatur. M. E. Olmsted. Filed in supreme court, middle district, Aug. 6, 1891.

44 Know all men by these presents that we, The New York, Lake Erie & Western Coal & Railroad Company and William H. Metzger and A. C. Stamm, of the city of Harrisburg and State

of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of five hundred dollars ($500), to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this sixteenth day of July, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a court of common pleas in and for the county of Dauphin, State of Pennsylvania, in a suit depending in said court between the Commonwealth of Pennsylvania and the New York, Lake Erie & Western Coal & Railroad Company, in which judgment was rendered against the New York, Lake Erie & Western Coal & Railroad Company, which judgment was afterwards affirmed by the supreme court of Pennsylvania in a suit in said court, of May term, 1891, No. 8, in the middle district of said court, and the said New York, Lake Erie & Western Coal & Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Pennsylvania, citing and admonishing her to be and appear at a Supreme Court
45 of the United States to be holden at Washington within thirty days from the date of said writ of error:

Now, the condition of the above obligation is such that if the said New York, Lake Erie & Western Coal & Railroad Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NEW YORK, LAKE ERIE & WESTERN COAL & RAILROAD COMPANY,

(Signed) By J. K. P. HALL, *President.*

Attest:

[SEAL.] (Signed) A. R. MACDONOUGH, *Secretary.*

(Signed) W. H. METZGER.

" A. C. STAMM.

Signed, sealed, and delivered in presence of—

(Signed) A. J. SMALLWOOD.

" RUSSELL P. BUTLER.

Approved by—

JOSEPH P. BRADLEY,

Asso. Justice Sup. Ct U. S.

UNITED STATES OF AMERICA, }
Litchfield, Connecticut, } *ss:*

Alexander C. Stamm maketh oath and saith that he is worth thirty-five hundred dollars after all his debts are paid, and that he knows William H. Metzger, the other surety in the foregoing bond,